Title 18-A: PROBATE CODE

Article 2: Intestate Succession and Wills

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Part 1: INTESTATE SUCCESSION

§2-101. INTESTATE ESTATE

Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this Code. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-102. SHARE OF SPOUSE OR REGISTERED DOMESTIC PARTNER

The intestate share of the surviving spouse or surviving registered domestic partner is: [2003, c. 672, §6 (AMD).]

(1). If there is no surviving issue or parent of the decedent, the entire intestate estate;

[2003, c. 672, §6 (AMD) .]

(2). If there is no surviving issue but the decedent is survived by a parent or parents, the first $50,000, plus 1/2 of the balance of the intestate estate;

[1979, c. 540, §1 (NEW) .]

(3). If there are surviving issue all of whom are issue of the surviving spouse or surviving registered domestic partner also, the first $50,000, plus 1/2 of the balance of the intestate estate; or

[2003, c. 672, §6 (AMD) .]

(4). If there are surviving issue one or more of whom are not issue of the surviving spouse or surviving registered domestic partner, 1/2 of the intestate estate.

[2003, c. 672, §6 (AMD) .]

SECTION HISTORY
1979, c. 540, §1 (NEW). 2003, c. 672, §6 (AMD).

§2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE OR SURVIVING REGISTERED DOMESTIC PARTNER

The part of the intestate estate not passing to the surviving spouse or surviving registered domestic partner under section 2-102, or the entire estate if there is no surviving spouse or surviving registered domestic partner, passes as follows: [2003, c. 672, §7 (AMD).]

(1). To the issue of the decedent; to be distributed per capita at each generation as defined in section 2-106;

[1979, c. 540, §1 (NEW) .]

(2). If there is no surviving issue, to the decedent's parent or parents equally;

[1979, c. 540, §1 (NEW) .]

(3). If there is no surviving issue or parent, to the issue of the parents or either of them to be distributed per capita at each generation as defined in section 2-106;

[1979, c. 540, §1 (NEW) .]

(4). If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased to be distributed per capita at each generation as defined in section 2-106; and the other half passes to the maternal relatives in the same manner; but if there is no surviving grandparent or issue of grandparents on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half; or

[2003, c. 672, §7 (AMD) .]

(5). If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by one or more great-grandparents or issue of great-grandparents, half of the estate passes to the paternal great-grandparents who survive, or to the issue of the paternal great-grandparents if all are deceased, to be distributed per capita at each generation as defined in section 2-106; and the other half passes to the maternal relatives in the same manner; but if there is no surviving great-grandparent or issue of a great-grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

[2003, c. 672, §7 (AMD) .]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1981, c. 94, (AMD). 2003, c. 672, §7 (AMD).

§2-104. REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR 120 HOURS

Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the State under section 2-105. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-105. NO TAKER

If there is no taker under the provisions of this Article, the intestate estate passes to the State, except that an amount of funds included in the estate up to the total amount of restitution paid to the decedent pursuant to a court order for a crime of which the decedent was the victim passes to the Elder Victims Restitution Fund established in Title 34-A, section 1214-A. [2011, c. 241, §1 (AMD).]

SECTION HISTORY
1979, c. 540, §1 (NEW). 2011, c. 241, §1 (AMD).

§2-106. PER CAPITA AT EACH GENERATION

If per capita at each generation representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship which contains any surviving heirs and deceased persons in the same degree who left issue who survived the decedent. Each surviving heir in the nearest of degree which contains any surviving heir is allocated one share and the remainder of the estate is divided in the same manner as if the heirs already allocated a share and their issue had predeceased the decedent. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-107. KINDRED OF HALF BLOOD

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-108. AFTERBORN HEIRS

Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-109. MEANING OF CHILD AND RELATED TERMS

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person: [1979, c. 540, §1 (NEW).]

(1). An adopted person is the child of an adopting parent and not of the natural parents except that an adopted child inherits from the natural parents and their respective kin if the adoption decree so provides, and except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent. If a natural parent wishes an adopted child to inherit from the natural parents and their respective kin, the adoption decree must provide for that status;

[1993, c. 686, §1 (AMD); 1993, c. 686, §13 (AFF) .]

(2). In cases not covered by subsection (1), legal parentage of a child is determined under Title 19-A, chapter 61.

(i). [2015, c. 296, Pt. C, §3 (RP); 2015, c. 296, Pt. D, §1 (AFF).]

(ii). [2015, c. 296, Pt. C, §3 (RP); 2015, c. 296, Pt. D, §1 (AFF).]

(iii). [2015, c. 296, Pt. C, §3 (RP); 2015, c. 296, Pt. D, §1 (AFF).]

[2015, c. 296, Pt. C, §3 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

(3). A divorce or judicial separation does not bar the issue of the marriage from inheriting.

[1995, c. 694, Pt. C, §6 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1987, c. 736, §37 (AMD). 1993, c. 686, §1 (AMD). 1993, c. 686, §13 (AFF). 1995, c. 694, §C6 (AMD). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §3 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§2-110. ADVANCEMENTS

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If a contemporaneous writing by the decedent establishes the value of the property advanced, that value shall apply. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-111. DEBTS TO DECEDENT

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-112. ALIENAGE

No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-113. DOWER AND CURTESY ABOLISHED

The estates of dower and curtesy are abolished. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-114. PERSONS RELATED TO DECEDENT THROUGH 2 LINES

A person who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share. In cases where such an heir would take equal shares, he shall be entitled to the equivalent of a single share. The court shall equitably apportion the amount equivalent in value to the share denied such heir by the provisions of this section. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

Part 2: ELECTIVE SHARE OF SURVIVING SPOUSE

§2-201. RIGHT TO ELECTIVE SHARE

(a). If a married person domiciled in this State dies, the surviving spouse has a right of election to take an elective share of 1/3 of the augmented estate under the limitations and conditions hereinafter stated.

[1979, c. 540, §1 (NEW) .]

(b). If a married person not domiciled in this State dies, the right, if any, of the surviving spouse to take an elective share in property in this State is governed by the law of the decedent's domicile at death; provided that no claim under this subsection shall be made to real property located in this State which was conveyed for value by the decedent during his lifetime.

[1983, c. 441, §1 (AMD) .]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1983, c. 441, §1 (AMD).

§2-202. AUGMENTED ESTATE

The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts: [1979, c. 540, §1 (NEW).]

(1). The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(i). Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property; [1979, c. 540, §1 (NEW).]

(ii). Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit; [1979, c. 540, §1 (NEW).]

(iii). Any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship; [1979, c. 540, §1 (NEW).]

(iv). Any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed $3,000. [1979, c. 540, §1 (NEW).]

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse. [1979, c. 540, §1 (NEW).]

(2). The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this paragraph:

(i). Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent. [1979, c. 540, §1 (NEW).]

(ii). Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent. [1979, c. 540, §1 (NEW).]

(iii). Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(3). For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer described was made to a bona fide purchaser.

[1983, c. 441, §2 (AMD) .]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1983, c. 441, §2 (AMD).

§2-203. RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE

The right of election of the surviving spouse may be exercised only during the lifetime of the surviving spouse by: [2009, c. 571, Pt. UU, §2 (AFF); 2009, c. 571, Pt. UU, §1 (RPR).]

(a). The surviving spouse; or

[2009, c. 571, Pt. UU, §1 (NEW); 2009, c. 571, Pt. UU, §2 (AFF) .]

(b). If the surviving spouse is a protected person, by order of the court in which protective proceedings for the surviving spouse are pending, after a finding that exercise is necessary to provide adequate support for the surviving spouse during the probable life expectancy of the surviving spouse. In a proceeding under this subsection, the surviving spouse's present or future eligibility for public assistance does not diminish the need for support.

[2009, c. 571, Pt. UU, §1 (NEW); 2009, c. 571, Pt. UU, §2 (AFF) .]

SECTION HISTORY
1979, c. 540, §1 (NEW). 2009, c. 571, Pt. UU, §2 (AFF). 2009, c. 571, Pt. UU, §1 (RPR).

§2-204. WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS

The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-205. PROCEEDING FOR ELECTIVE SHARE; TIME LIMIT

(a). The surviving spouse may elect to take his elective share in the augmented estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of death, or within 6 months after the probate of the decedent's will, whichever limitation last expires. However, that nonprobate transfers, described in section 2-202, paragraph (1), shall not be included within the augmented estate for the purpose of computing the elective share, if the petition is filed later than 9 months after death.

The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired. [1979, c. 540, §1 (NEW).]

(b). The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

[1979, c. 540, §1 (NEW) .]

(c). The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

[1979, c. 540, §1 (NEW) .]

(d). After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has

possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

[1979, c. 540, §1 (NEW) .]

(e). The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this State or other jurisdictions.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-206. EFFECT OF ELECTION ON BENEFITS PROVIDED BY STATUTE

A surviving spouse is entitled to homestead allowance, exempt property, and family allowance, whether or not he elects to take an elective share. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-207. CHARGING SPOUSE WITH GIFTS RECEIVED; LIABILITY OF OTHERS FOR BALANCE OF ELECTIVE SHARE

(a). In the proceeding for an elective share, values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the augmented estate. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth 1/2 of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.

[1979, c. 540, §1 (NEW) .]

(b). Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

[1979, c. 540, §1 (NEW) .]

(c). Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

Part 3: SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

§2-301. OMITTED SPOUSE

(a). If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the ommitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

[1979, c. 540, §1 (NEW) .]

(b). In satisfying a share provided by this section, the devises made by the will abate as provided in section 3-902.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-302. PRETERMITTED CHILDREN

(a). If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(1). It appears from the will that the omission was intentional; [1979, c. 540, §1 (NEW).]

(2). When the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or [1979, c. 540, §1 (NEW).]

(3). The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(b). If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

[1979, c. 540, §1 (NEW) .]

(c). In satisfying a share provided by this section, the devises made by the will abate as provided in section 3-902.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

Part 4: EXEMPT PROPERTY AND ALLOWANCES

§2-401. HOMESTEAD ALLOWANCE

A surviving spouse of a decedent who was domiciled in this State is entitled to a homestead allowance of $10,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $10,000 divided by the number of minor and dependent children of

the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share. The homestead allowance established by this section is the sole exemption available for a decedent's homestead. [2009, c. 150, §1 (AMD).]

SECTION HISTORY
1979, c. 540, §1 (NEW). 2001, c. 57, §1 (AMD). 2009, c. 150, §1 (AMD).

§2-402. EXEMPT PROPERTY

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this State is entitled from the estate to value not exceeding $7,000 in excess of any security interests in the estate in property exempt under Title 14, chapter 507, subchapter II, Article 7, on the date of death of the decedent. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $7,000, or if there is not $7,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $7,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property must abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. [2001, c. 57, §2 (AMD).]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1983, c. 441, §3 (AMD). 1983, c. 480, §A14 (AMD). 1985, c. 506, §A19 (RPR). 2001, c. 57, §2 (AMD).

§2-403. FAMILY ALLOWANCE

In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this State, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance. [1979, c. 540, §1 (NEW).]

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowance not yet paid. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-404. SOURCE, DETERMINATION AND DOCUMENTATION

If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and

exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding $12,000 or periodic installments not exceeding $1,000 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined. [2001, c. 57, §3 (AMD).]

SECTION HISTORY
1979, c. 540, §1 (NEW). 2001, c. 57, §3 (AMD).

§2-405. ESTATE PROPERTY EXEMPT

Notwithstanding any provisions to the contrary, any personal property included in the decedent's estate that is exempt under Title 14, section 4422, on the date of the decedent's death, is not liable for payment of debts of the decedent or claims against the decedent's estate, except that nothing in this section affects the provisions of sections 2-401 through 2-404. [2009, c. 150, §2 (AMD).]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1983, c. 480, §A14 (AMD). RR 2003, c. 1, §11 (COR). 2009, c. 150, §2 (AMD).

Part 5: WILLS

§2-501. WHO MAY MAKE A WILL

Any person 18 or more years of age who is of sound mind may make a will. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-502. EXECUTION

Except as provided for holographic wills, writings within section 2-513, and wills within section 2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least 2 persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-503. HOLOGRAPHIC WILL

A will which does not comply with section 2-502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-504. SELF-PROVED WILL

(a). Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate in substantially the following form:

I, ..., the testator, on this ..... day of ....., 19.., being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), as my free and voluntary act and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

.....
Testator

We, ..., ... the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as his last will and that he signed it willingly (or willingly directed another to sign for him), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

.....
Witness

.....
Witness

The State of .....
County of .....

Subscribed, sworn to and acknowledged before me by ....., the testator and subscribed and sworn to before me by ....., and ....., witnesses, this ..... day of .....

(Seal) (Signed) .....

.....
(Official capacity of officer)

[1979, c. 540, §1 (NEW) .]

(b). An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, attached or annexed to the will in substantially the following form:

The State of .....
County of .....

We, ..., ..., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), as his free and voluntary act, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

.....
Testator

.....
Witness

.....

Witness

Subscribed, sworn to and acknowledged before me by ....., the testator, and subscribed and sworn to before me by ....., and ....., witnesses, this ..... day of .....

(Seal) (Signed) .....
(Official capacity of officer)

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-505. WHO MAY WITNESS

(a). Any person generally competent to be a witness may act as a witness to a will.

[1979, c. 540, §1 (NEW) .]

(b). A will is not invalid because the will is signed by an interested witness.

[1979, c. 540, §1 (NEW) .]

(c).

[1979, c. 540, §1 (NEW); 1979, c. 690, §4 (RP) .]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1979, c. 690, §4 (AMD).

§2-506. CHOICE OF LAW AS TO EXECUTION

A written will is valid if executed in compliance with section 2-502 or 2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national or if executed in compliance with 10 United States Code, Section 1044d. [2005, c. 353, §1 (AMD).]

SECTION HISTORY
1979, c. 540, §1 (NEW). 2005, c. 353, §1 (AMD).

§2-507. REVOCATION BY WRITING OR BY ACT

A will or any part thereof is revoked [1979, c. 540, §1 (NEW).]

(1). By a subsequent will which revokes the prior will or part expressly or by inconsistency; or

[1979, c. 540, §1 (NEW) .]

(2). By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-508. REVOCATION BY DIVORCE; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES

If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 2-802, subsection (b). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-509. REVIVAL OF REVOKED WILL

(a). If a 2nd will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the 2nd will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

[1979, c. 540, §1 (NEW) .]

(b). If a 2nd will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a 3rd will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the 3rd will that the testator intended the first will to take effect.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-510. INCORPORATION BY REFERENCE

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-511. TESTAMENTARY ADDITIONS TO TRUSTS

A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the

trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-512. EVENTS OF INDEPENDENT SIGNIFICANCE

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-513. SEPARATE WRITING IDENTIFYING BEQUEST OF TANGIBLE PROPERTY

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-514. STATUTORY WILLS

(a). Any person may execute a will on the following form and the will shall be presumed to be reasonable. This section does not limit any spousal rights, rights to exempt property or other rights set forth elsewhere in this Code.

Maine Statutory Will

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD CONSULT A LAWYER AND ASK HIM TO EXPLAIN IT TO YOU.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S ELECTIVE SHARE, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS MAINE STATUTORY WILL. YOU SHOULD MARK THROUGH ALL SECTIONS OR PARTS OF SECTIONS WHICH YOU DO NOT COMPLETE. YOU MAY REVOKE THIS MAINE STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

6. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

7. IF YOU HAVE ANOTHER CHILD AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

8. THIS WILL IS NOT VALID UNLESS IT IS SIGNED BY AT LEAST TWO WITNESSES. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. IF YOU HAVE ANY DOUBTS WHETHER OR NOT THIS WILL ADEQUATELY SETS OUT YOUR WISHES FOR THE DISPOSITION OF YOUR PROPERTY, YOU SHOULD CONSULT A LAWYER.

MAINE STATUTORY WILL OF

. . . . . .

(Print your name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of my property

2.1 REAL PROPERTY. I give all my real property to my spouse, if living; otherwise it shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific real property to the person(s) named:

(name)	(description of item)	(signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific items to the person(s) named:

(name)	(description of item)	(signature)

2.3 CASH GIFT TO CHARITABLE ORGANIZATIONS OR INSTITUTIONS: I make the following cash gift(s) to the named charitable organizations or institutions in the amount stated. If I fail to sign this provision, no gift is made. If the charitable organization or institution does not survive me or accept the gift, then no gift is made

(name)	(amount)	(signature)

2.4 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause by placing my initials in the box in front of the letter "A", "B" or "C" signifying which clause I wish to adopt. I place my signature after clause "A" or clause "B", or after each individual distribution in clause "C". If I fail to sign the appropriate distribution(s) or if I sign in more than one clause or if I fail to place my initials in the appropriate box, this paragraph 2.4 will be invalid and I realize that the remainder of my property will be distributed as if I did not make a will. Property Disposition Clauses. (select one) ___ A. I leave all my remaining property to my spouse, if living. If not living, then in equal shares to my children and the descendants of any deceased child. _____ (signature). ___ B. I leave the following stated amount to my spouse and the remainder in equal shares to my children and the descendants of any deceased child. If my spouse is not living, that share shall be distributed in equal shares to my children and the descendants of any deceased child. _____ (signature). ___ C. I leave the following stated amounts to the persons named:

(name)	(amount)	(signature)
(name)	(amount)	(signature)
(name)	(amount)	(signature)
(name)	(amount)	(signature)
(name)	(amount)	(signature)

2.5 UNDISTRIBUTED PROPERTY. If I have any property which, for any reason, does not pass under the other parts of this will, all of that property shall be distributed as follows: (Draw a line through any unused space.)

(this paragraph only valid if signed)

Article 3. Nomination of guardian, conservator and personal representative

3.1 GUARDIAN. (If you have a child under 18 years of age, you may name at least one person to serve as guardian for the child.)

If a guardian is needed for any child of mine, then I nominate the first guardian named below to serve as guardian of that child. If the person does not serve, then the others shall serve in the order I list them. My nomination of a guardian is not valid without my signature.

FIRST GUARDIAN		(signature)
SECOND GUARDIAN		(signature)
THIRD GUARDIAN		(signature)

3.2 CONSERVATOR. (A conservator may be named to manage the property of a minor child. You do not need to name a conservator if you wish the guardian to act as conservator. If you wish to name a conservator in addition to a guardian, complete this paragraph, 3.2. If you do not wish to name a separate conservator, do not complete this paragraph.)

I nominate the first conservator named below to serve as conservator for any minor children of mine. If the first conservator does not serve, then the others shall serve in the order I list them. My nomination of a conservator is not valid without my signature.

FIRST CONSERVATOR _____ _____
(signature)

SECOND CONSERVATOR _____ _____
(signature)

THIRD CONSERVATOR _____ _____
(signature)

3.3 PERSONAL REPRESENTATIVE. (Name at least one.) I nominate the person or institution named as first personal representative below to administer the provisions of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them. My nomination of a personal representative is not valid without my signature.

FIRST PERSONAL REPRESENTATIVE _____ _____
(signature)

SECOND PERSONAL REPRESENTATIVE _____ _____
(signature)

THIRD PERSONAL REPRESENTATIVE _____ _____
(signature)

I sign my name to this Maine Statutory Will on _____ (date) at _____ (city) in the State of _____

_____
Your Signature

STATEMENT OF WITNESSES (You must have two witnesses.)

Each of us declares that the person who signed above willingly signed this Maine Statutory Will in our presence or willingly directed another to sign it for him or her or that he or she acknowledged that the signature on this Maine Statutory Will is his or hers or that he or she acknowledged that this Maine Statutory Will is his or her will and we sign below as witnesses to that signing.

Signature _____
Printed name _____
Address _____
Signature _____
Printed name _____
Address _____

[1983, c. 816, Pt. A, §7 (AMD) .]

(b). Forms for executing a statutory will shall be provided at all Probate Courts for a cost equivalent to the reasonable cost of printing and storing the forms. A statutory will shall be deemed to be valid if the blanks are filled in with a typewriter or in the handwriting of the person making the will. Failure to complete

or mark through any section or part of a section in the statutory will shall not invalidate the entire will. Failure to sign any section or part of a section in the statutory will requiring a signature shall only invalidate the part not signed, except as specifically provided in paragraph 2.4.

[1983, c. 376, (NEW) .]

SECTION HISTORY
1983, c. 376, (NEW). 1983, c. 816, §A7 (AMD).

Part 6: RULES OF CONSTRUCTION

§2-601. REQUIREMENT THAT DEVISEE SURVIVE TESTATOR BY 120 HOURS

A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-602. CHOICE OF LAW AS TO MEANING AND EFFECT OF WILLS

The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in Part 2, the provisions relating to exempt property and allowances described in Part 4 or any other public policy of this State otherwise applicable to the disposition. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-603. RULES OF CONSTRUCTION AND INTENTION

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Part apply unless a contrary intention is indicated by the will. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-604. CONSTRUCTION THAT WILL PASSES ALL PROPERTY; AFTER-ACQUIRED PROPERTY

A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will. A devise of property conveys all the estate of a devisor unless it appears by his will that he intended to convey a lesser estate. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-605. ANTI-LAPSE; DECEASED DEVISEE; CLASS GIFTS

If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee, and if they are all of the same degree of kinship they take equally, but if of unequal degree then those of more remote degree take by per capita at each generation as provided in section 2-106. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-606. FAILURE OF TESTAMENTARY PROVISION

(a). Except as provided in section 2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

[1979, c. 540, §1 (NEW) .]

(b). Except as provided in section 2-605 if the residue is devised to 2 or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-607. CHANGE IN SECURITIES; ACCESSIONS; NONADEMPTION

(a). If the will provides for a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1). As much of the devised securities as is a part of the estate at the time of the testator's death; [1979, c. 540, §1 (NEW).]

(2). Any additional or other securities of the same entity owned by the testator that arise from the specifically devised securities by reason of action initiated by the entity excluding any acquired by exercise of purchase options; [1979, c. 540, §1 (NEW).]

(3). Securities of another entity owned by the testator that are received in exchange for the specifically devised securities as a result of a merger, consolidation or reorganization or other similar action initiated by the entity; and [1979, c. 540, §1 (NEW).]

(4). Any additional securities of the entity owned by the testator that arise from the specifically devised securities as a result of a plan of reinvestment if it is a regulated investment company. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(b). Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) are not part of the specific devise.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§2-608. NONADEMPTION OF SPECIFIC DEVISES IN CERTAIN CASES; UNPAID PROCEEDS OF SALE, CONDEMNATION OR INSURANCE; SALE BY CONSERVATOR

(a). A specific devisee had the right to the remaining specifically devised property and:

(1). Any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property; [1979, c. 540, §1 (NEW).]

(2). Any amount of a condemnation award for the taking of the property unpaid at death; [1979, c. 540, §1 (NEW).]

(3). Any proceeds unpaid at death on fire or casualty insurance on the property; and [1979, c. 540, §1 (NEW).]

(4). Property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(b). If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (a).

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-609. NONEXONERATION

A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-610. EXERCISE OF POWER OF APPOINTMENT

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-611. CONSTRUCTION OF GENERIC TERMS IN WILLS AND TRUST INSTRUMENTS

Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in wills and in trust instruments in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father or is so recognized by the testator or settlor of the trust. [1979, c. 540, §1 (NEW).]

A devise to the issue of a person must be distributed per capita at each generation. [1989, c. 695, (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1989, c. 695, (AMD).

§2-612. ADEMPTION BY SATISFACTION

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

Part 7: CONTRACTUAL ARRANGEMENTS RELATING TO DEATH SEE ALSO ARTICLE 6

§2-701. CONTRACTS CONCERNING SUCCESSION

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this Act, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills. [1979, c. 540, §1 (NEW).]

SECTION HISTORY
1979, c. 540, §1 (NEW).

Part 8: GENERAL PROVISIONS

§2-801. RENUNCIATION OF PROPERTY INTERESTS

(a). A person, or a person with legal authority to represent an incapacitated or protected person or the estate of a deceased person, to whom an interest in or with respect to property or an interest therein or a power of appointment over such property devolves by whatever means may renounce it in whole or in part by delivering a written renunciation under this section. The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision of similar restriction.

[1979, c. 540, §1 (NEW) .]

(b). A renunciation under this section must be an irrevocable and unqualified refusal by a person to accept an interest in property, and must comply with the following requirements:

(1). If the property, interest or power has devolved to the person renouncing under a testamentary instrument or by the laws of intestacy, the renunciation must be received by the personal representative, or other fiduciary, of the decedent or deceased donee of a power of appointment, or by the holder of the legal title to the property to which the interest relates, (i) in the case of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of the power, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is indefeasibly vested. A copy of the renunciation may be filed in the Registry of Probate of the court in which proceedings for the administration of the deceased owner or deceased donee of the power have been commenced, or if no administration has been commenced, in the court where such proceedings could be commenced. [1979, c. 540, §1 (NEW).]

(2). If the property, interest or power has devolved to the person renouncing under a nontestamentary instrument or contract, the renunciation must be received by the transferor, his legal representative, or the holder of the legal title to the property to which the interest relates (i) in the case of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is indefeasibly vested. If the person entitled to renounce does not have actual knowledge of the existence of his interest, the time limits for receipt of the renunciation shall be extended to not later than 9 months after he has knowledge of the existence of his interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(c). A surviving joint tenant may renounce as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may renounce the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant and the survivor did not join in creating the joint tenancy.

[1979, c. 540, §1 (NEW) .]

(d). If real property or an interest therein or a power thereover is renounced, a copy of the renunciation may be recorded in the Registry of Deeds of the county in which the property is located, and the recording or lack of recording shall have the same effect for purposes of the recording act as the recording or lack of recording of other instruments under Title 33, section 201.

[1979, c. 540, §1 (NEW) .]

(e). A renunciation under this section shall describe the property, interest or power renounced, declare the renunciation and extent thereof, be signed by the person renouncing, and if within the provisions of subsection (b), paragraph (2), declare the date the person renouncing first had actual knowledge of the existence of his interest whenever that date is material under subsection (b), paragraph (2).

[1979, c. 540, §1 (NEW) .]

(f). The devolution of any property or interest renounced under this section is governed by the following provisions of this subsection:

(1). If the property or interest devolved to the person renouncing under a testamentary instrument or under the laws of intestacy and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the person renouncing had predeceased the decedent or, if the

person renouncing was designated to take under a power of appointment exercised by a testamentary instrument, it devolves as if the person renouncing had predeceased the donee of the power. Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced, takes effect as if the person renouncing had died before the event determining that the taker of the property or interest had become finally ascertained and his interest is indefeasibly vested. A renunciation relates back for all purposes to the date of death of the decedent, or of the donee of the power, or the determinative event, as the case may be. [1979, c. 540, §1 (NEW).]

(2). If the property or interest devolved to the person renouncing under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, it devolves as if the person renouncing had died before the effective date of the instrument or contract. Any future interest that takes effect in possession or enjoyment at or after the termination of the renounced estate or interest, takes effect as if the person renouncing had died before the event determining the taker of the property or interest had become finally ascertained and his interest indefeasibly vested. A renunciation relates back for all purposes to the effective date of the instrument or the date of the determinative event, as the case may be. [1979, c. 540, §1 (NEW).]

(3). The renunciation or the written waiver of the right to disclaim is binding upon the person renouncing or waiving and upon all persons claiming through or under him. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(g). The right to renounce property or an interest therein or a power of appointment is barred by (1) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, (2) a written waiver of the right to renounce, (3) an acceptance of the property or interest or a benefit thereunder, or (4) a sale of the property or interest under judicial sale made before the renunciation is effected.

[1979, c. 540, §1 (NEW) .]

(h). This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein or a power of appointment under any other statute.

[1979, c. 540, §1 (NEW) .]

(i). An interest in property that exists on the effective date of this section as to which the time for renouncing has not expired under this section, may be renounced by compliance with this section.

[1979, c. 540, §1 (NEW) .]

(j). Any renunciation which is effective as a "qualified disclaimer" under section 2518(b) of the Internal Revenue Code is effective as a renunciation under this section, notwithstanding any provisions of this section to the contrary.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-802. EFFECT OF DIVORCE, ANNULMENT AND DECREE OF SEPARATION

(a). A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

[1979, c. 540, §1 (NEW) .]

(b). For purposes of Parts 1, 2, 3 and 4 and of section 3-203, a surviving spouse does not include:

(1). A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife; [1979, c. 540, §1 (NEW).]

(2). A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd person; or [1979, c. 540, §1 (NEW).]

(3). A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS

(a). A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this Article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

[1979, c. 540, §1 (NEW) .]

(b). Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of coownership with survivorship incidents.

[1979, c. 540, §1 (NEW) .]

(c). A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

[1979, c. 540, §1 (NEW) .]

(d). Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

[1979, c. 540, §1 (NEW) .]

(e). A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing a Court may determine by clear and convincing evidence whether the killing was felonious and intentional for purposes of this section.

[1979, c. 540, §1 (NEW) .]

(f). This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW).

§2-804. ACTIONS FOR WRONGFUL DEATH

(a). Whenever the death of a person shall be caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the person or the corporation that would have been liable if death had not ensued shall be liable for damages as provided in this section, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as shall amount to a felony.

[1979, c. 540, §1 (NEW) .]

(b). Every wrongful death action must be brought by and in the name of the personal representative of the deceased person. The amount recovered in every wrongful death action, except as otherwise provided, is for the exclusive benefit of the surviving spouse if no minor children, of the children if no surviving spouse, one-half for the exclusive benefit of the surviving spouse and one-half for the exclusive benefit of the minor children to be divided equally among them if there are both surviving spouse and minor children and to the deceased's heirs to be distributed as provided in section 2-106 if there is neither surviving spouse nor minor children. The jury may give damages as it determines a fair and just compensation with reference to the pecuniary injuries resulting from the death and in addition shall give such damages that will compensate the estate of the deceased person for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses. In addition, the jury may give damages not exceeding $500,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought. The jury may also give punitive damages not exceeding $250,000. An action under this section must be commenced within 2 years after the decedent's death, except that if the decedent's death is caused by a homicide, the action may be commenced within 6 years of the date the personal representative of the decedent discovers that there is a just cause of action against the person who caused the homicide. If a claim under this section is settled without an action having been commenced, the amount paid in settlement must be distributed as provided in this subsection. A settlement on behalf of minor children is not valid unless approved by the court, as provided in Title 14, section 1605.

[2015, c. 451, §1 (AMD) .]

(c). Whenever death ensues following a period of conscious suffering, as a result of personal injuries due to the wrongful act, neglect or default of any person, the person who caused the personal injuries resulting in such conscious suffering and death shall, in addition to the action at common law and damages recoverable therein, be liable in damages in a separate count in the same action for such death, brought, commenced and determined and subject to the same limitation as to the amount recoverable for such death and exclusively for the beneficiaries in the manner set forth in subsection (b), separately found, but in such cases there shall be only one recovery for the same injury.

[1979, c. 540, §1 (NEW) .]

(d). Any action under this section brought against a governmental entity under Title 14, sections 8101 to 8118, shall be limited as provided in those sections.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1981, c. 213, (AMD). 1989, c. 340, (AMD).
1991, c. 187, (AMD). 1995, c. 577, §1 (AMD). 1999, c. 772, §1 (AMD).
2007, c. 280, §1 (AMD). 2009, c. 180, §1 (AMD). 2015, c. 451, §1 (AMD).

§2-805. SIMULTANEOUS DEATH

(a). This section may be cited as the "Uniform Simultaneous Death Act."

[1979, c. 540, §1 (NEW) .]

(b). When the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons died otherwise than simultaneously, the property of each person must be disposed of as if that person were the survivor, except as provided otherwise in this part.

[1991, c. 824, Pt. A, §26 (AMD) .]

(c). Where a testamentary disposition of property depends upon the priority of death of the designated beneficiaries and there is no sufficient evidence that these beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are designated beneficiaries and these portions shall be distributed respectively to those who would take in the event that each designated beneficiary were the survivor.

[1979, c. 540, §1 (NEW) .]

(d). Where there is no sufficient evidence that 2 joint tenants died otherwise than simultaneously, the property so held shall be distributed 1/2 as if one had survived and 1/2 as if the other had survived. If there are more than 2 joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

[1979, c. 540, §1 (NEW) .]

(e). Where the decedents are the insured and the beneficiary respectively in policies of life or accident insurance and there is no sufficient evidence that they died otherwise than simultaneously, the proceeds of each policy shall be distributed as if the person whose life was insured therein survived.

[1979, c. 540, §1 (NEW) .]

(f). This section shall not apply to the distribution of the property of any person dying before July 26, 1941, nor to the distribution of the proceeds of any policy of life or accident insurance the effective date of which is prior to that date.

[1979, c. 540, §1 (NEW) .]

(g). This section shall not apply in the case of wills, deeds or contracts of insurance wherein provision has been made for distribution different from the provisions of said section.

[1979, c. 540, §1 (NEW) .]

(h). This section shall be so construed and interpreted as to effectuate their general purpose to make uniform the law in those states which enact them.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1991, c. 824, §A26 (AMD).

§2-806. EFFECT OF CRIMINAL CONVICTION ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, BENEFICIARY DESIGNATIONS AND OTHER PROPERTY ACQUISITION WHEN RESTITUTION IS OWED TO THE DECEDENT

A person who has been convicted of a crime of which the decedent was a victim is not entitled to the following benefits to the extent that the benefits do not exceed the amount of restitution the person owes to the decedent as a result of the sentence for the crime: [2011, c. 241, §2 (NEW).]

(a). Any benefits under the decedent's will or under this Article;

[2011, c. 241, §2 (NEW) .]

(b). Any property owned jointly with the decedent;

[2011, c. 241, §2 (NEW) .]

(c). Any benefit as a beneficiary of a bond, life insurance policy or other contractual arrangement in which the principal obligee or the person upon whose life the policy is issued is the decedent; and

[2011, c. 241, §2 (NEW) .]

(d). Any benefit from any acquisition of property in which the decedent had an interest.

[2011, c. 241, §2 (NEW) .]

SECTION HISTORY
2011, c. 241, §2 (NEW).

Part 9: CUSTODY AND DEPOSIT OF WILLS

§2-901. DISPOSITION OF WILL DEPOSITED WITH COURT

A will deposited for safekeeping with the court in the office of the register of probate before September 19, 1997 may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that designated person on request; or the court may deliver the will to the appropriate court. The court may not accept a will for safekeeping after September 19, 1997. [1997, c. 683, Pt. C, §3 (AMD); 1997, c. 683, Pt. C, §4 (AFF).]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1997, c. 76, §1 (AMD). 1997, c. 683, §C3 (AMD). 1997, c. 683, §C4 (AFF).

§2-902. DUTY OF CUSTODIAN OF WILL; LIABILITY

After the death of a testator, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court for filing and recording until probate is sought. Any person having custody of a will is not liable, to any person aggrieved, for failure to learn of the death of the testator of that will and the failure, therefore, to deliver that will as required. Any person who willfully fails to deliver a will, or who willfully defaces or destroys any will of a deceased person, is liable to any person aggrieved for the damages, which may be sustained by such failure to deliver, or by such defacement or destruction. Any person who willfully refuses or fails to deliver a will, or who so defaces or destroys it, after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court. [1993, c. 148, §5 (AMD).]

SECTION HISTORY
1979, c. 540, §1 (NEW). 1983, c. 706, (AMD). 1993, c. 148, §5 (AMD).